IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.1287 OF 2004
WITH
WRIT PETITION NO.5525 OF 2003

W.P. No.1287/04 :

Prasad Tukaram Nimbalkar & Ors. ...Petitioners.
Vs.
The State of Maharashtra & Ors. ...Respondents.
....
W.P. No.5525/03:

Miss Kirti Vijay Urankar & Anr. ...Petitioners.
Vs.
State of Maharashtra & Ors. ...Respondents.
....
Mr.A. V. Anturkar with Mr. Sangram P. Pawar for the Petitioners.
Mrs. M. P. Thakur, AGP for Respondent Nos.1 and 2.
Mr. R. G. Ketkar for Respondent No.3.
Mr. V.D. Patil for Respondent No.4.
.....
CORAM : F.I. REBELLO, J. AND
DR.D.Y.CHANDRACHUD, J.

January 24, 2006.

P.C. (Per Dr. D.Y. Chandrachud, J.):

The Petitioners are all students of the Respondent, which is a College of Architecture at Akurdi, Pune. The Petitioners successfully passed the Higher Secondary Certificate Examination with an aggregate of at least 50% marks in all subjects together.

The students were informed by the College that the Director of Technical Education (who is impleaded as the Second Respondent here) does not consider the Petitioners to be eligible for the five year degree course in Architecture. The Second Respondent, it would appear, has sought to place reliance on the following conditions of eligibility contained in paragraph 2.1.2 of the Rules for Admission of the First Year of the Degree Course in Architecture for the year 2003-04:

> "2.1.2 ARCHITECTURE:
>
> To be eligible for Admission to First year degree in Architecture, the candidate should have;
>
> passed the HSC (Std. XII) examination of Maharashtra State Board of Secondary and Higher Secondary Education or its equivalent examination with subjects English, Physics, Chemistry and Mathematics.
>
> Secured minimum 50% marks (45% for backward class candidates from Maharashtra) in the Subjects Physics, Chemistry and Mathematics taken together.
>
> AND
>
> Appeared for the Architecture Aptitude Test conducted by the Admission Authority of the individual institutes for

the year 2003-2004 and secured minimum of 16 marks out of 40 marks.” (emphasis supplied).

2. The Council of Architecture which is a statutory body constituted under the Architect Act, 1972 has framed the Council of Architecture (Minimum Standards of Architectural Education) Regulations, 1983 in exercise of the power conferred by clauses (e),(g), (h) and (j) of Sub-section (2) of Section 45 read with Section 21 of the Architects Act, 1972. These Regulations were published in the Gazette of India dated 27th August 1983. The guidelines of the Council of Architecture prescribe conditions for eligibility for admission in the following terms:

“25 ELIGIBILITY FOR ADMISSION

A candidate who has passed 10+2 examination and has secured not less than 50% marks with Mathematics and English as subjects of examination shall be eligible for admission to 1st year of a 5-year B.Arch. Courts, subject to an aptitude test.”

3. The Petitioners moved these proceedings contending that the Architects Act, 1972 has been enacted by Parliament and

the conditions of eligibility enunciated by the Council of Architecture which is a statutory body under Central Legislation must prevail. The Petitioners have stated that they fulfill the guidelines prescribed by the Council of Architecture in that all of them have passed the HSC (Standard 12) examination with at least 50% and with English, and Mathematics as subjects.

4. These petitions were admitted by a Division Bench of this Court and pending the hearing and final disposal of the petitions, the Third Respondent was restrained from discontinuing the course of studies of the Petitioners on the ground that they have not qualified for taking admission in the B.Arch. Degree Course.

5. An affidavit in reply has been filed by the Assistant Director in the Directorate of Technical Education in which it has been stated that the conditions of eligibility for admission to the First Year of the Degree Course in Architecture for the year 2003-04 require a minimum of 50% marks in Physics, Chemistry and Mathematics taken together and since the Petitioners do not meet with this condition, they were not eligible for admission. Reliance

has been placed on the Minimum Standards of Architectural Education Regulations, 1994 framed by the AICTE in which the conditions for eligibility for admission to the Five Year Degree Course in Architecture have been prescribed as follows :

> "The minimum qualification for admission to Degree Programmes in architecture should be a pass in the 10+2 Senior Secondary examination with a minimum aggregate of 60% marks in Physics, Chemistry & Mathematics obtained in a single sitting. The duration of degree programe in architecture will be five years after (10+2)/XII Std."

6. The attention of the Court was drawn to a judgment of a Division Bench of this Court in **Shri Prince Shivaji Maratha Boarding House's College of Architecture vs. State of Maharashtra** (Writ Petition 5942 of 2004) decided on 8th September 2004. The Division Bench there held that the Architects Act, 1972 is a complete code in itself for the registration of and the education of architects and that it specifically deals with recognised qualifications which would include regulating and monitoring course content and standards of education. Section 17

of the Act contains a non-obstante clause. On the other hand, the main function of the AICTE Act is to coordinate the development of technical education in general without being confined only to Architecture. The Architects Act, 1972 was consequently held to be special legislation. Consequently, the Division Bench held that the provisions in the AICTE Act governing technical education do not displace the authority of Council of Architecture constituted under the Architects Act, 1972. In the Petition filed before the Supreme Court under Article 136 of the Constitution against the judgmetn of the Division Bench (Petition for Special Leave to Appeal (Civil) No.26936 of 2004) leave was granted against the judgment of the Division Bench but stay has been refused. The petition was filed by AICTE before the Supreme Court.

7. In our view, it is not necessary for the purposes of these proceedings to enter upon a canvass that is wider than what is necessary for the disposal of the case. Since the judgment of the Division Bench was placed before this Court together with the order of the Supreme Court, we have made a reference thereto. However, the circumstances as they have arisen now in the context of the present case do not require this Court to enter upon

the wider issue as to whether the Architects Act, 1972 and the standards laid down by the Council of Architecture will prevail over the standards prescribed by AICTE. That is because as a matter of fact, the State Government in its affidavit in reply dated 3rd February 2005 in these proceedings has adverted to a Government Resolution dated 23rd June 2003. The State Government has averred that the Rules prescribed by the Council of Architecture are required to be published at least six months before the actual admission process and hence the Rules "are considered for implementation from the Academic Year 2004-05". In other words, the position of the State Government is that the prescription laid down by the Council of Architecture would be adopted but, that since adequate notice was necessary, these would be implemented from the Academic Year 2004-05. The Court has been informed that as a matter of fact, the requirement laid down by the Council of Architecture has been adopted by the Government of Maharashtra though for the subsequent years. In this background, the question which arises before the Court is as to whether the admissions which have been granted to the Petitioners before the Court should be disturbed. In Writ Petition No.1287 of 2004 it has been stated that by the time the petition was filed, the

students have already completed one year of the five year Degree Course in Architecture. By interim orders dated 28th August 2003 (in W.P. 5525 of 2003) and 24th February 2004 (in W. P. 1287 of 2004), the College was restrained from discontinuing the admission of the Petitioners. Over two years have since elapsed after the passing of the interim order in the petition of 2003 and nearly two years since the interim order in the second petition of 2004. The students have substantially completed their course of studies. There was no misrepresentation by the students at any stage. In this background, particularly having regard to the fact that the State Government has now adopted the guidelines prescribed by the Council of Architecture, the ends of justice would manifestly require that the admissions of the Petitioners before the Court should not be disturbed. The Petitioners should, in our view, be permitted to complete their course of studies. We direct accordingly.

8. These petitions shall stand disposed of in the aforesaid terms. There shall be no order as to costs.

(F.I. Rebello, J.)

(Dr. D.Y. Chandrachud, J.)